

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Capstar TX Limited Partnership,)	File No. EB-03-IH-0368
)	NAL/Acct. No. 200532080135
Licensee of Station WKSS(FM),)	FRN 0003474905
Hartford-Meriden, Connecticut)	Facility ID # 53384
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 21, 2005

Released: June 22, 2005

By the Chief, Investigations and Hearing Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Capstar TX Limited Partnership (“Capstar”), licensee of Station WKSS(FM), Hartford-Meriden, Connecticut, apparently liable for a monetary forfeiture in the amount of \$4,000 for a violation of section 73.1216 of the Commission’s rules,¹ which requires licensees to broadcast fully and accurately the material terms of a contest. We find that Capstar conducted and broadcast the “I Do Island” contest over Station WKSS(FM) and apparently awarded a prize package valued significantly less than the value publicized by the station and stated in the contest rules.

II. BACKGROUND

2. According to the complaint,² Station WKSS(FM) (the “Station”) publicized and broadcast a contest called “I Do Island.” Patterned after the television program “Survivor,” the contest required five brides-to-be to live continuously in the center court of a shopping mall for seven days and nights utilizing only the clothes worn on the first day of the contest, a sleeping bag, and one additional item. Contestants were allowed to leave the center court only for short, scheduled bathroom breaks and could eat only “wedding cake” supplied by the Station. Each day Station listeners voted to eliminate one of the contestants from the contest. As the last remaining bride-to-be, the complainant won the contest, entitling her to a “Wedding Package” consisting of a wedding reception, bridal gown, bridesmaids’ dresses, wedding rings, honeymoon package, and other parts of a traditional wedding event. On that day, Station staff told her that within two weeks she would receive all of the information necessary to collect the prizes advertised. Approximately three months after the contest ended, however, the complainant contends that she still had not received all of the information about the prizes that she

¹ 47 C.F.R. § 73.1216.

² Letter to the Federal Communications Commission, dated June 17, 2003 (“Complaint”).

needed to plan her upcoming wedding and that the Station ultimately informed her the prizes awarded were worth only \$20,330, substantially less than the \$35,000 prize package advertised by the Station.³

3. On July 26, 2004, the Enforcement Bureau (“Bureau”) sent a letter of inquiry to Capstar.⁴ On August 16, 2004, Clear Channel, the ultimate parent company of Capstar, responded on behalf of Capstar⁵ and stated that the Station’s promotions “described the [“I Do Island”] contest prize as an ‘ultimate wedding package’ worth approximately \$30,000.”⁶ Capstar admitted, however, that the actual value of the prize package was \$20,330.⁷ Because the Initial Response failed to respond properly to the Bureau’s inquiries, on October 7, 2004, the Bureau sent another letter of inquiry to Capstar.⁸ Clear Channel responded on October 27, 2004,⁹ and stated, contrary to the statement in its Initial Response, that Capstar’s contest promotions “did not mention the approximate value of the prize package.”¹⁰

4. In both responses, Capstar argues that the Station complied with the contest rules and that the Station took several corrective actions to ensure that the complainant was treated fairly. Specifically, Capstar contends that it offered to host a wedding rehearsal dinner and to supply a photographer for the complainant’s wedding as additional prizes in order to increase the value of the prize package awarded to her.¹¹ The complainant allegedly refused to accept those additional prizes.¹² Capstar presented a release indicating, however, that on September 17, 2003, the complainant accepted a payment of \$5,000 in full settlement of her complaints.¹³

³ The complainant alleges that the Station advertised that the Wedding Package was worth \$35,000, although she acknowledges that the contest rules give a lower figure, \$30,000. *See Complaint* at 1.

⁴ *See* Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Capstar TX Limited Partnership, dated July 26, 2004.

⁵ *See* Letter from Hamlet T. Newsom, Jr., Associate General Counsel, Clear Channel Communications, Inc. (“Clear Channel”), the ultimate parent company of Capstar, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 16, 2004 (“Initial Response”).

⁶ *See* Initial Response at Exhibit 1, ¶5.

⁷ *See* Initial Response at 2.

⁸ *See* Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Capstar TX Limited Partnership, dated October 7, 2004 (“October LOI”).

⁹ *See* Letter from Hamlet T. Newsom, Jr., Associate General Counsel, Clear Channel Communications, Inc. (“Clear Channel”), the ultimate parent company of Capstar, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 27, 2004 (“October Response”).

¹⁰ *See* October Response at 2 and Exhibit 1, ¶2.

¹¹ *See* Initial Response at 2; October Response at 2, ¶4.

¹² *Id.*

¹³ *See* Initial Response at Exhibit 2.

III. DISCUSSION

5. The Communications Act of 1934, as amended (the “Act”), at section 503(b)(1), provides that any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.¹⁴ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed. The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule. As we set forth in greater detail below, we conclude under this procedure that Capstar is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violations of section 73.1216 of the Commission's rules.

6. Section 73.1216 of the Commission's rules requires a broadcast licensee to conduct station-sponsored contests “substantially as announced or advertised,” and to disclose fully and accurately the “material terms” of such contests.¹⁵ Material terms generally include “the extent, nature and value of prizes” and “the basis for valuation of the prizes.”¹⁶ Licensees, as public trustees, have the affirmative

¹⁴ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1); 47 U.S.C. § 503(b)(1)(d) (forfeitures for violation of 14 U.S.C. § 1464). Section 312 (f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (“*Callais*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). “Repeated” merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais*, 16 FCC Rcd at 1362, ¶9.

¹⁵ 47 C.F.R. § 73.1216 specifically provides that “a licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.”

¹⁶ See 47 C.F.R. § 73.1216, notes 1(b) and 2. Note 1 to that rule provides that the material terms of the contest include “the extent, nature and value of prizes” and “the basis for valuation of the prizes.” Note 2 to the rule states: “In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of material terms may be made in a non-broadcast manner.” See also *New Northwest Broadcasters*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 9352 (Enf. Bur. 2004) (forfeiture paid); *ABC, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 25647 (Enf. Bur. 2003) (forfeiture paid); *Isothermal Community College*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 23932 (Enf. Bur. 2003) (forfeiture paid); *Citicasters Co.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16612 (Enf. Bur. 2000) (forfeiture paid).

obligation to prevent the broadcast of false, misleading or deceptive contest announcements.¹⁷ A broadcast announcement concerning a contest is false, misleading or deceptive “if the net impression of the announcement has a tendency to mislead the public.”¹⁸ Accordingly, the Commission has repeatedly held that “licensees are ‘responsible for broadcasting accurate statements as to the nature and value of contest prizes, and will be held accountable for any announcement which tends to mislead the public.’”¹⁹

7. In this case, it appears that Capstar violated section 73.1216 of the Commission’s rules by overstating the value of the prize package to be awarded to the winner of its March 2003, “I Do Island” contest. According to the complainant, promotions broadcast over Station WKSS(FM) valued the contest’s prize package at approximately \$35,000.²⁰ Capstar provides contradictory statements, indicating in its Initial Response that broadcast promotions valued the prize at \$30,000 and in its October Response that no value was given during broadcasts.²¹ The complainant and Capstar agree that the contest rules state the value of the prizes was approximately \$30,000.²²

8. We need not attempt to decide which of Capstar’s conflicting versions of the facts surrounding the advertisement of the “I Do Island” contest is most credible.²³ Assuming that Capstar

¹⁷ *WMJX, Inc.*, Order, 48 RR 2d 1339, 1355 (1981).

¹⁸ *Id.* at 1355-56. “The Commission stated in *Eastern Broadcasting Corp.*, 14 FCC 2d 228, 229 (1968): ‘Deception may result from the use of statements which are not technically false or which may be literally true, since only the relevant consideration is the impact of the statements to the public.’” *WMJX, Inc.*, 48 RR 2d at 1355-56 & n.82. Moreover, licensees will be held accountable for broadcasting ambiguous contest rules that tend to mislead the public. *Id.* at 1357 & n. 81.

¹⁹ *Citicasters Co.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16612, 16613-14 (Enf. Bur. 2000) (quoting *WMJX, Inc.*, 48 RR 2d at 1357); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 2734, 2735 (Enf. Bur. 2000) (same) (forfeiture paid).

²⁰ See Complaint at 1.

²¹ See Initial Response at 1 and note 1; October Response at 2, ¶2. In support of its position, Capstar provided two affidavits from Sarah Hannon, described in the Initial Response as the Station’s Director of Promotions and in the October Response as the Assistant Director of Promotions at the time of the “I Do Island” contest. In her first affidavit, attached as Exhibit 1 to the Initial Response, Ms. Hannon states that the contest’s prize package was valued at approximately \$30,000 in the contest rules, in flyers distributed by the Station and in promotions broadcast by the Station. See Initial Response at Exhibit 1, ¶5. However, in her second affidavit, attached to Capstar’s October Response, Ms. Hannon states that “to the best of [her] recollection” the value of the prize package was not mentioned in the Station’s promotions about the contest. See October Response at Exhibit 1, ¶2. Capstar fails to provide any explanation for these opposing statements and has not provided audio tapes or transcripts of the contest advertisements.

²² See Complaint at 1; Initial Response at 1 (attaching contest rules, which state “prize value: \$30,000 (approx.).”

²³ Section 1.17 of the Commission’s rules, 47 C.F.R. § 1.17, prohibits licensees from submitting to the Commission written and oral statements of fact that are intentionally incorrect or misleading and written statements of fact that are made without a reasonable basis for believing that the statements of fact are correct and not misleading. In this case, the affidavit of Sarah Hannon, submitted with the Initial Response, stated that the station “periodically aired promotions disclosing the contest’s material terms. These promotions described the contest prize as an ‘ultimate wedding package’ worth approximately \$30,000.” Ms. Hannon’s second affidavit, (continued....)

did, in fact, run broadcast messages advertising the value of the prize package at \$30,000 (or at \$35,000, as the complaint charges), that sum is significantly higher than the approximately \$20,000 actual value of the package initially awarded and the advertisements would constitute an apparent violation of section 73.1216. Assuming, on the other hand, that the second of Capstar's inconsistent filings is correct in stating that the value of the prizes was not advertised through broadcast messages at all, Capstar has, nonetheless, apparently violated section 73.1216. First, that rule generally requires that "material terms should be disclosed periodically by announcements broadcast on the station," and material terms generally include, among other things, the "value of prizes" and "basis for valuation,"²⁴ so the omission itself is a violation. Further, there is no dispute that the written rules concerning the contest valued the prizes at \$30,000. Non-broadcast advertisements of a contest must also "fully and accurately" disclose the material terms; thus the \$30,000 valuation in the written material is as problematic as it would be in a broadcast message.²⁵

9. Although Capstar offered additional prizes in an attempt to increase the value of the prize package, it did so only after the complainant objected to receiving a prize package valued significantly lower than the one advertised by the Station. Such remedial actions do not absolve Capstar from liability and the proposed forfeiture penalty.²⁶ In addition, the fact that the complainant executed a release with Capstar does not affect our decision since she did not withdraw the complaint she filed prior to the release.²⁷

10. Based upon the evidence before us, we find that Capstar apparently willfully²⁸ and repeatedly violated section 73.1216 of the Commission's rules by willingly and repeatedly advertising inaccurate and misleading statements regarding a material term of the "I Do Island" contest, namely the value of the prize package. The Commission's *Forfeiture Policy Statement* sets a base forfeiture

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submitted with the October Response, stated that the broadcast announcements "[t]o the best of my recollection . . . included a description of the grand prize, but did not mention the approximate value of the prize package." Although these statements contradict each other, there is insufficient evidence to conclude that either was intentionally misleading or was made without a reasonable belief that it was true when it was made. Neither statement appears to be an attempt to prove compliance with section 73.1216 of the Commission's rules. In fact, each statement admits a violation of that rule, to wit, the first admits that the broadcasts advertised an inflated value for the prize package and the second admits that a material term of the contest, the value of the prize, was not broadcast.

²⁴ 47 C.F.R. § 73.1216, notes 1-2.

²⁵ 47 C.F.R. 73.1216.

²⁶ See *AT&T Wireless Services, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 21866, 21871 (2002); see also *Station KVGL, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259 (1973).

²⁷ The staff contacted her and confirmed that she did not intend to withdraw her complaint notwithstanding the release.

²⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4387.

amount of \$4,000 for failure to broadcast fully and accurately the material terms of a contest.²⁹ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in section 503(b)(2)(D) of the Act,³⁰ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. After considering the record, the factors listed above and the *Forfeiture Policy Statement*, we believe that a \$4,000 forfeiture is appropriate in this case. Although the substantial revenues of Capstar's ultimate corporate parent³¹ and its previous violations of Commission rules³² ordinarily would warrant a proposed forfeiture above the base amount, we find that those factors are counter-balanced here by the licensee's good-faith efforts to remedy the situation prior to our initiation of this investigation.³³

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁴ and sections 0.111, 0.311, and 1.80 of the Commission's rules,³⁵ that Capstar TX Limited Partnership is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Four Thousand Dollars (\$4,000) for willfully violating section 73.1216 of the Commission's rules.

12. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Capstar TX Limited Partnership SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number

²⁹ The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); 47 C.F.R. § 1.80(b).

³⁰ 47 U.S.C. § 503(b)(2)(D).

³¹ In 2004, Clear Channel Communications, Inc. had revenues of more than \$ 9.4 billion. See United States Securities and Exchange Commission Form 10-K, Annual Report, Clear Channel Communications, Inc. (2004).

³² See *supra* note 19 (prior contest violations). See also *Capstar TX Limited Partnership c/o Dorann Bunkin, Esq.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20203 (Med. Bur. 2003) (public file violations).

³³ See *Radio One Licenses, Inc.*, Forfeiture Order, 18 FCC Rcd 15964, 15965 4 (1003), recon. denied, 18 FCC Rcd 25481 (2003) (reducing forfeiture for EAS violations because the licensee had identified the problems and had ordered replacement equipment prior to FCC on-site inspection).

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

911-6106.

14. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³⁶

17. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Capstar TX Limited Partnership, Attention: Troy G. Langham, 2625 S. Memorial Drive, Suite A, Tulsa, Oklahoma 74129-2623; Hamlet T. Newsom, Jr., Associate General Counsel, Clear Channel Communications, Inc., 200 E. Basse Road, San Antonio, Texas 78209-8328; Christopher Cain, Esq., Clear Channel Communications, Inc., 200 E. Basse Road, San Antonio, Texas 78209-8328; John Burgett, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006 and Jessica Dolan, 745 Merrow Road, Unit 162, Coventry, Connecticut 06238.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau

³⁶ See 47 C.F.R. § 1.1914.